

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

ADDISON INSURANCE COMPANY,
an Iowa corporation,

Plaintiff,

vs.

THE PINK PALACE, LLC, a Nebraska
limited liability company, and DOREEN
WHITE,
Defendants.

Case No. _____

**COMPLAINT
FOR DECLARATORY JUDGMENT**

JURY DEMAND

Plaintiff alleges:

1. Plaintiff is an Iowa corporation with its principal place of business in Cedar Rapids, Iowa and is authorized to do business in the State of Nebraska.

2. Defendant The Pink Palace, LLC ("Pink Palace") is a Nebraska limited liability company with its principal place of business located in Scotts Bluff County, Nebraska. Defendant operates the Pink Palace bar and restaurant in Scotts Bluff County, Nebraska. Defendant Doreen White ("White") is a resident of Scotts Bluff County, Nebraska, and was an employee of Pink Palace on September 8, 2013.

3. This is an action for declaratory judgment brought under the provisions of the Declaratory Judgment Act to determine the rights, duties, and obligations of the parties hereto under a Commercial Lines Policy, Policy No. 60323864 ("the Policy"). Plaintiff issued the Policy, having effective dates of June 10, 2013 to June 10, 2014 to Pink Palace.

4. Jurisdiction of this Court is based on 28 U.S.C. §§ 1332 and 2201.

5. Pink Palace and White are third-party defendants in an action filed in the District Court of Scotts Bluff County, Nebraska which is captioned and styled *John Lintz, et al. v. Lucky One, LLC, et al. v. The Pink Palace, LLC, et al.* ("*Lintz v. Lucky One*") and docketed as Case No. C116-133.

6. In *Lintz v. Lucky One*, plaintiffs therein allege that they played Keno on September 8, 2013 at the Pink Palace and that the Keno writer, White, was utilizing a pre-programmed, random number generating Keno machine owned and operated by Lucky One. The plaintiffs in *Lintz v. Lucky One* claim total Keno winnings among all plaintiffs therein of at least \$452,778.03 and some part of an additional \$55,940.35. Plaintiffs therein claim that Lucky One improperly refused to pay to them their Keno winnings due to an alleged "glitch in the system" and

that they made demand for payment to Lucky One on approximately March 25, 2015 and again on approximately January 22, 2016, but that Lucky One refuses to pay. The *Lintz v. Lucky One* plaintiffs further make claim for damages for loss of wages; loss of earning capacity; present and future pain and suffering; loss of society and companionship; past and future humiliation; and for attorney's fees.

7. Lucky One sued Pink Palace and White as third party defendants in *Lintz v. Lucky One* claiming that the Pink Palace and White were negligent in the operation of the Keno game and that Pink Palace and White are responsible for the *Lintz v. Lucky One* plaintiffs' damages, if any.

8. Pink Palace and White claim coverage under the Policy and have demanded that plaintiff herein defend Pink Palace and White and, if necessary, indemnify Pink Palace and White in *Lintz v. Lucky One*.

9. The Policy provides for Bodily Injury and Property Damage Liability coverage under Coverage A for "bodily injury" and "property damage" caused by an "occurrence". The plaintiffs in *Lintz v. Lucky One* do not have a claim for bodily injury or property damages and such plaintiffs' claims were not caused by an occurrence.

10. There is no coverage for Pink Palace or White under Coverage B Personal and Advertising Injury Liability.

11. The Policy excludes bodily injury or property damage expected or intended from the standpoint of the insured.

12. The Policy excludes coverage for bodily injury or property damage caused by assumption of liability in a contract or agreement.

13. The Policy includes an endorsement which modifies the Policy by providing the following:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ATHLETIC OR SPORTS PARTICIPANTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Description of Operations

RESTAURANT / SAND VOLLEYBALL / KENO

With respect to any operations shown in the Schedule, this insurance does not apply to 'bodily injury' to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

14. The Policy includes an endorsement which modifies the Policy by providing the following:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

SPECIAL EVENTS EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of:
 - a. any mechanically operated or inflatable amusement device; ...

WHEREFORE, plaintiff prays that this court (1) enter a declaratory judgment determining the rights and obligations of the parties under the Policy; (2) that the court find that this plaintiff is under no duty or obligation to defend defendants in the *Lintz v. Lucky One* lawsuit, or to assume any liability for the acts of the defendants; (3) that the Court declare that at the time and place the claim made in *Lintz v. Lucky One* arose that the defendants were not covered by the policy of insurance attached hereto; (4) for such other and further relief as the Court deems appropriate; and (5) costs and attorney's fees as applicable.

ADDISON INSURANCE COMPANY, an Iowa corporation, Defendant.

By /s/ Mark D. Fitzgerald
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JURY DEMAND

Plaintiff demands a jury on all issues triable to a jury in Omaha, Nebraska.

By /s/ Mark D. Fitzgerald

One of Its Attorneys, #17861

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